

BEFORE THE POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON

EMERSON HOEL,

Appellant,

v.

OLYMPIC AIR POLLUTION
CONTROL AUTHORITY,

Respondent.

PCHB NO. 93-35

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

This matter came on for hearing before the Pollution Control Hearings Board on Friday, September 24, 1993, in the Board's offices in Lacey, Washington. Board Chairman Robert V. Jensen and Richard Kelley, Board member, were in attendance with Administrative Appeals Judge John H. Buckwalter presiding. Proceedings were recorded by Betty Koharski, Certified Shorthand Reporter, of Gene Barker & Associates of Olympia, Washington.

At issue was a fifty dollar civil penalty imposed by the Olympic Air Pollution Control Authority (the "Authority") on Emerson Hoel ("Hoel") for an alleged violation of a burn ban.

Appearances for the parties were:

Emerson Hoel, pro se, for Appellant.

Fred D. Gentry of Bean and Gentry, Attorney, for Respondent.

Witnesses were sworn and testified, exhibits were examined and admitted, and closing arguments were heard. From these, the Board makes these

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1 FINDINGS OF FACT

2 I

3 Hoel owns and resides in a residence located at 3703 Fuller Lane
4 S.E., Olympia, Washington from which address he operates Hoel
5 Construction Company whose primary business is the building and
6 renovation of residences.

7 II

8 On December 4, 1992, the Authority declared a Stage 1 Impaired
9 Air Curtailment (a "burn ban") for areas within its jurisdiction.
10 Notification of the ban was issued to the public through television
11 and radio announcements. The Authority also has a telephone number
12 through which members of the public can make a daily check to
13 determine burn ban status.

14 III

15 On December 5, 1992, at approximately 8.55 a.m., Robert Moody, an
16 Inspector for the Authority, observed a plume of smoke coming from the
17 chimney of the Hoel residence and prepared Notice of Violation-
18 Citation No. 113 which described the alleged violation as "Burning
19 during a declared Impaired Air Curtailment, Stage 1 (a 'burn ban') in
20 violation of WAC 173-433-150".

21 IV

22 By certified mail on December 10, 1992, the Authority sent Hoel
23 a copy of the Notice along with a document giving the possible fines
24 for violations and an Exemption Form to be completed by Hoel if he had
25 a certified wood stove. The Form required the manufacturer and the

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1 | model and serial numbers of the stove.

2 | V

3 | At the time Hoel bought the stove from an Idaho distributor, he
4 | received a manufacturer's manual which contained the model and serial
5 | numbers, but he was not able to find the manual.

6 | VI

7 | The model and serial numbers are on the back of Hoel's stove
8 | which is approximately 4" from the wall, and the pipe to the chimney
9 | is fixed permanently to the stove. In their attempts to read the
10 | numbers by using a mirror, neither Hoel nor his wife could do so
11 | because they both wear bifocal glasses which blurred the numbers. He
12 | offered no evidence that he asked anyone else except the Authority to
13 | make the attempt. The Authority declined because of its
14 | interpretation that its personnel were prohibited from entering the
15 | Hoel residence by RCW 70.94.200 which excepts "nonmultiple unit
16 | private dwellings housing two families or less" from the Authority's
17 | right to enter private or public property.

18 | VII

19 | Hoel returned the Exemption Form, dated December 11, 1992, to the
20 | Authority with no other information about his stove than that the
21 | manufacturer was Country Comfort and that "We are unable to read the
22 | (model and serial) numbers because they are on the back - too close to
23 | the wall. We would have to remove the stove." Nine months later and
24 | without being able to give any source except his memory, Hoel
25 | testified that the model number of the stove was 1000.

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VIII

By Notice of Civil Penalty Assessment dated February 1, 1993, the Authority notified Hoel that, in accordance with Section 3.27 of the Authority's Regulation I, he was assessed a \$50 dollar penalty, with \$25 suspended, for a first violation of WAC 173-433-150. Hoel appealed to the Board within the required 30 day time limit.

IX

Any Conclusion of Law deemed to be a Finding of Fact is hereby incorporated as such. From these Findings of Fact the Board makes the following

CONCLUSIONS OF LAW

1.

The Board has jurisdiction over this appeal. RCW's 70.94.431, 43.21B.110, 43.21B.310. The Respondent Authority bears the burden of proof. WAC 371-08-183. The Board takes judicial notice of the Authority's Regulations I, II, and III.

2.

Section 3.27 of the Authority's Regulation I authorizes the Authority to enforce and penalize violations, not only of its own Regulations, but also of regulations of the Department of Ecology.

Ecology's WAC 473-433-150, under which Hoel was charged, provides that, when an authority has declared the first stage of impaired air quality, no solid fuel device shall be operated unless it is certified.

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1 3.

2 The Authority, by un rebutted evidence, established a prima facie
3 case that Hoel operated a solid fuel burning device during a Stage 1
4 burn ban on December 5, 1992, and Hoel failed to supply the
5 certification information necessary to demonstrate that his burning
6 device, a Country Comfort stove, was exempt.

7 4.

8 We conclude that Hoel violated WAC 473-433-150 as charged by the
9 Authority.

10 5.

11 The claims of Hoel that he misunderstood the law and its
12 application as to him do not give us cause to mitigate the penalty.
13 The Washington Clean Air Act is a strict liability statute. RCW
14 70.94.040. Acts violating its implementing regulations are not
15 excused on the basis of intent or because of lack of knowledge or
16 understanding of the law. See Pearson Construction v. PSAPCA, PCHB No.
17 38-186 (1989).

18 6.

19 On the contrary, Hoel could have or should have known the correct
20 legal implications of the law; he could have had someone other than
21 himself and his wife attempt to verify the model and serial numbers
22 necessary to prove stove certification; and, as the owner of a
23 construction business he had available the knowledge and resources to
24 move the stove if necessary. These, along with his failure to find
25 his owner's manual, indicate a less than thorough attempt to prove his

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1 claimed exemption, and the Board enters the following

2 ORDER

3 THAT the \$50 civil penalty is AFFIRMED without the suspension of
4 any part thereof.

5 Done this 5th day of October, 1993

6 POLLUTION CONTROL HEARINGS BOARD

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8 
ROBERT V. JENSEN, Chairman

9
10 
RICHARD C. KELLEY, Member

11 JOHN H. BUCKWALTER
12 Administrative Appeals Judge
Presiding

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